

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

BILLY SMALLEY §  
§  
§  
vs. § C.A. NO.: 3:21-cv-1313  
§  
JAMES WILLIAMS AND NEW PRIME, INC. §

**DEFENDANTS' NOTICE OF REMOVAL**

Defendants, NEW PRIME, INC., and JAMES WILLIAMS (“Defendants”) file this Notice of Removal pursuant to 28 U.S.C. § 1441.

**I. INTRODUCTION**

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 116<sup>th</sup> Judicial District Court, in Dallas County, Texas, where this matter was pending under Cause No. DC-21-05477, in a matter styled, *Billy Smalley v. James Williams and New Prime, Inc.*

**II. NATURE OF SUIT**

2. Plaintiff’s lawsuit arises from an alleged motor vehicle collision that occurred on May 8, 2020. Plaintiff seeks actual damages, pain and suffering, mental anguish, physical impairment, past and future loss of earnings, past and future disfigurement, past and future medical expenses and exemplary damages.

**III. TIMELINESS OF REMOVAL**

3. Plaintiff filed his Original Petition on April 29, 2021. Plaintiff’s Petition asserted an amount in controversy of over seventy-five thousand dollars (\$75,000.00). *Id.*

4. Defendants were served citation on May 11, 2021. Pursuant to 28 U.S.C. § 1446(b)(3), this Notice of Removal is timely filed within thirty (30) days after receipt of information from which it may first be ascertained that the case is one which is or has become removable.

#### **IV. BASIS FOR REMOVAL JURISDICTION**

5. Removal is proper under 28 U.S.C. §§1441 and 1332(a) because there is a complete diversity of citizenship between Plaintiff and the properly-named Defendants in this lawsuit and the amount in controversy exceeds \$75,000.00. No properly joined Defendant is a citizen of Texas.

##### **A. Proper Parties**

6. Plaintiff is a resident and citizen of Dallas County, Texas.

7. Defendant New Prime, Inc. is organized and existing under the laws of the State of Missouri. Accordingly, Defendant is a citizen of Missouri for purposes of diversity jurisdiction.

*See Harvey v. Grey Wolf Drilling Co., 542 F.3d 1077, 1079-80 (5th Cir. 2008).*

8. Defendant James Williams is and was at the time of the filing of this action, a citizen and resident of the State of Ohio.

##### **B. Amount in Controversy**

9. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff seek actual damages, pain and suffering, mental anguish, physical impairment, past and future loss of earnings, past and future disfigurement, and past and future medical expenses. Accordingly, it is “facially apparent” that Plaintiff’s claims likely exceed \$75,000.00, which is all that is required to satisfy the amount-in-controversy requirement. *See Allen v. R&H Oil & Gas Co., 63 F.3d 1326, 1335 (5th Cir. 1995).*

#### **V. NOTICE IS PROCEDURALLY CORRECT**

10. Defendants have attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81 as follows:

- A: Index of all attachments, including a copy of the state-court docket sheet and a copy of each document filed in the State Court Action;
- B: All executed process in the State Court Action; and
- C: List of Counsel of Record.

11. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) because no properly joined and served Defendant is a citizen of Texas, the state in which the action was brought. This action is removable to this Court because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§124(a)(1), 1441(a).

12. In accordance with 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all parties and to the Clerk of the 116<sup>th</sup> Judicial District Court in Dallas County, Texas.

DATED: JUNE 8, 2021.

Respectfully submitted,

**GAUNTT, KOEN, BINNEY & KIDD, L.L.P.**

*/s/ Robert J. Collins* \_\_\_\_\_

**KARL W. KOEN**

State Bar No.: 11652275

[karl.koen@gkbklaw.com](mailto:karl.koen@gkbklaw.com)

**ROBERT J. COLLINS**

State Bar No.: 24031970

[Robert.Collins@gkbklaw.com](mailto:Robert.Collins@gkbklaw.com)

14643 Dallas Parkway, Suite 500

Dallas, Texas 75254

(972) 630-4620 – Telephone

(972) 630-4669 – Fax

**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record pursuant to the Texas Rules of Civil Procedure, as indicated below, on this the 8<sup>th</sup> day of June, 2021.

**Via ProDoc**

Ms. Lauren Jobin

Ms. Shelly Greco

Witherite Law Group, PLLC

10440 N. Central Expressway Suite 400

Dallas, Texas 75231-2228

*/s/ Robert J. Collins* \_\_\_\_\_

**ROBERT J. COLLINS**